Supreme Court, U.S.
FILED

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NO OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

FREDDIE C. JOHNSON

Petitioner,

V.

ROBERT B. REICH
SECRETARY OF LABOR

Respondent.

Petition For Writ Of Certiorari To The
United States Court of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Freddie C. Johnson
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Holly Springs, MS 38635
(601) 252-2501

In propria persona

20 pgs

QUESTIONS PRESENTED

1. This Court should grant this Petition to resolve the question whether OSHA exceeded its jurisdiction in violation of the United States Constitution Art. 1 §8 cl 3 as, Petitioner was not involved in commerce with foreign nations and/or amongst the several states, and/or with the Indian Tribes.

2. The Court should grant this Petition to resolve the Federal question of the conflict with applicable decisions of this Court, as to call for an exercise of this Court's power of supervision.

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OPINIONS BELOW

The unpublished written decision of the United States Court of Appeals for the Fifth Circuit appears in Appendix page App 3 & 4 of this Petition and the said denial of Petitioner's Petition for REHEARING EN BANC appears in Appendix page App 5 & 6.

◆

JURISDICTION

Jurisdiction is conferred upon the United States Supreme Court pursuant to the U.S.A. Constitution Article III § 1 and 2; Rules of the Supreme Court of The United States Rule 10.1 (a) (c); Title 28 USC § 1254 (1).

◆

CONSTITUTIONAL PROVISIONS

USA Constitution Article I

Section 8 clause 3

To regulate Commerce with foreign Nations, and among the several States, and with the

Indian Tribes.

STATEMENT OF THE CASE

Petitioner, Freddie C. Johnson, Sole Proprietor, respectfully request that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Fifth Circuit wherein the said Court affirmed the final order of the Occupational Safety and Health Review Commission granting the Secretary of Labor's motion for default judgment based on the petitioners failure to respond to discovery requests, see Appendix page App 1 & 2. So ordered on the 31st day of January, 1996, see Appendix page App 3 & 4, this Petitioner filed for a Petition To Rehear En Banc pursuant to FRCP RULES 35 & 40, which was DENIED by the said Fifth Circuit file date the 9th day of April, 1996, see Appendix page App 5 & 6.

1. This Court should grant the

Petition to resolve the question whether OSHA exceeded its jurisdiction in violation of the United States Constitution Article I § 8 cl 3 as Petitioner was not involved in commerce with foreign nations and/or amongst the several states and /or with the Indian Tribes.

Petitioner is a Sovereign Citizen of the State of Mississippi and all his work is performed exclusively within the State of Mississippi and never crosses state lines nor with any foreign nations, nor amongst the several states, nor with any Indian Tribes.

Petitioner has a business of installing water and sewer pipes exclusively in the State of Mississippi and not performed on any Federal Enclave.

The question presented is whether OSHA exceeded its jurisdiction in violation of the United States Constitution Art. I § 8 cl 3 as this Petitioner is not in commerce, thus OSHA

has/had no jurisdiction over this Sovereign Citizen of the State of Mississippi.

2. The Court should grant the Petition to resolve the Federal question of the conflict with applicable decisions of this Court, as to call for an exercise of the Court's power of supervision.

As this United States Supreme Court has applied the applicable de-cision on (commerce) U.S. Constitution Art. I § 8 cl 3 in the following cases.

> . *"The activities that are beyond the reach of Congress are 'those which are completely within a particular state',"* KATZENBACH V. McCLUNG, 13 L.Ed 2d 290, 297 (1964).
>
> *"The transportation as between the carrier and its patrons ends when the freights are received at the warehouse, and the charges made is for a service which ends there."* INT. COM. COMM. V. DETROIT & c. RAIL-

WAY CO., 167 U.S. 633, 643 (1897).

> *'We are of the opinion that the cab service is an independent local service, preliminary or subsequent to any interstate transportation, ..."* PENNSYLVANIA R.R. CO. V. KNIGHT, 192 U.S. 21, 28 (1904).

> *"The mere fact there may be a constant flow of commodities into a State does not mean that the flow continues after the property has arrived within the State and is there held solely for local disposition and use."* SCHECHTER CORP. V. U.S. 296 US 495, 543 (1935).

This United States Supreme Court should exercise its power of supervision to resolve this Federal question as the previously cited and quoted case laws are applicable in this Petitioner's case and the Fifth Circuit below failed to apply these applicable decisions of this Court.

THE PROCEEDINGS BELOW

Petitioner appealed a final order of OSHReview Commission granting the Secretary of Labor's motion for default judgment based on the Petitioners failure to respond to discovery request, which was AFFIRMED by the Judge of the said Fifth Circuit Court of Appeals.

OSHA issued a Citation and Notification of Penalty without jurisdiction and therefore, exceeding its jurisdiction, USCA Art. I § 8 cl 3, the said jurisdiction was challenged *timely and continually*, and by the applicable decisions of this Supreme Court and pursuant to HAGEN V. LEVINE, 415 US 528, 533 (1974) . . .

> *"as once jurisdiction is challenged it must be overcome with facts and law" and "The jurisdictional question being an important one, we grant certiorari."*

This said jurisdictional challenge was made *timely and has never been*

overcome with facts and law or applicable decisions of this Supreme Court.

Petitioner's exclusive business is within the State of Mississippi installing water and sewer pipes in the earth of the State of Mississippi that are not connected to any other (several) states or any Federal Enclave and this Supreme Court said SCHECHTER CORP. V. US. 296 US 495, 543 (1935) that the commodities come to a rest within the State and never leaves the State then commerce ceases.

The pipes this Petitioner placed in the earth of the State of Mississippi which never left the said State, then commerce ceased.

Thus, OSHA and its Review Commission, its Administrative Law Judge were without jurisdiction over this Petitioner and this OSHA and OSHReview Commission and its Administrative law Judge exceeded the jurisdiction of USCA Art. I § 8 cl 3.

The Fifth Circuit Court should have

dismissed OSHA's Citation and Notification of Penalty issued to this Petitioner as OSHA, OSHReview Commission and its Administrative Law Judge were without jurisdiction of USCA Art. I § 8 cl 3. and pursuant to the applicable laws in this case.

The Fifth Circuit Court was absent any/all jurisdiction to AFFIRM the final order of the OSHReview Commission and its Administrative Law Judge.

The Fifth Circuit Court upon Petitioners Suggestion to Rehear En Banc failed to apply the applicable decisions and laws in the case, thus the Supreme Court should exercise its power of supervision to resolve this Federal questions which is in conflict with the applicable decisions of this Supreme Court.

REASONS FOR GRANTING WRIT

This Supreme Court should grant this Petition to resolve the question of whether OSHA exceeded its jurisdiction in

violation of USCA Art. I § 8 cl 3 and to resolve the Federal Question of the Conflict with the applicable decisions of this Supreme Court.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully request this Honorable Court to grant this petition.

Date: July 8, 1996

Respectfully submitted
without prejudice,

FREDDIE C. JOHNSON
420 WEST PEYTON ROAD
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MISSISSIPPI 38635
(601) 252-2501

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United States of America
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
One Lafayette Centre
1120 20th Street, N.W. - 9th Floor
Washington, DC 20036-3419

SECRETARY OF LABOR, Complainant, v. F.C. JOHNSON, d/b/a JOHNSON CONSTRUCTION COMPANY, Respondent.	:	Docket No. 94-2076

NOTICE OF FINAL ORDER

The petition for discretionary review filed by the Respondent, in the above cited action, was received by the Commission on January 30, 1995. The case was not directed for review. Therefore, the decision of the Administrative Law Judge Became a final order of the Commission on February 13, 1995. Rule 90(d), 29 CFR § 2200.90(d); Section 12(j) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 661(j).

ANY PERSON ADVERSELY AFFECTED OR AGGRIEVED WHO WISHES TO OBTAIN REVIEW OF THE DECISION OF THE ADMINISTRATIVE LAW JUDGE MUST FILE A NOTICE OF APPEAL WITH THE APPROPRIATE

FEDERAL COURT OF APPEALS WITHIN 60 DAYS OF THE DATE OF THE ABOVE FINAL ORDER DATE. See Section 11 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 660.

FOR THE COMMISSION

/s/Ray H. Darling,Jr.
Ray H. Darling, Jr.
Executive Secretary

February 14, 1995
Date

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-60200
Summary Calendar

F C JOHNSON CONSTRUCTION COMPANY,

Petitioner

versus

ROBERT B REICH, Secretary of Labor

Respondent

On Petition for Review of an Order of the Occupational Safety and Health Review Commission

(94-2076)

Before JOLLY, JONES and STEWART, Circuit Judges.

PER CURIAM:*

Having reviewed the record and the briefs of the parties, we AFFIRM the final order of the Occupational Safety and Health Review Commission granting the Secretary of Labor's motion for default judgment based on the petitioner's failure to respond to discovery requests. 29 C.F.R. § 2200.52(e) (1994).

AFFIRMED'

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*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

'We also DENY Johnson's petition to set aside the order granting leave to the commission to correct a clerical error.

??? ??? ???
(unidentifiable signatures)

January 31, 1996

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

95-60200

F C JOHNSON, doing business as F J Johnson Construction Company

Petitioner

v.

ROBERT B REICH, Secretary of Labor

Respondent

- - - - - - - - - - -

Petition for Review of an Order of the Occupational Safety & Health Rev. Comm.

- - - - - - - - - - -

ON PETITIONS FOR REHEARING AND SUGGESTIONS FOR REHEARING EN BANC

(Opinion 1/31/96, 5 Cir., _____, _____ F. 3d_____)

(April 9, 1996)

Before JOLLY, JONES and STEWART, Circuit Judges.

PER CURIAM:

(X) The Petitions for Rehearing are DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FRAP and

Local Rule 35) the Suggestions for Rehearing En Banc are also DENIED.

CLERK'S NOTE:
SEE FRAP and Local Rules 41 For Stay of the MANDATE

( ) The Petitions for Rehearing are DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor, (FRAP and Local Rule 35) the Suggestions for Rehearing En Banc are DENIED.

( ) A member of the court in active service having requested a poll on the reconsiderations of this cause en banc, and a majority of the judges in active service not having voted in favor, Rehearings En Banc are DENIED.

ENTERED FOR THE COURT:

E. Grady Jolly

United States Circuit Judge

REHG-16